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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,878	09/22/2003	Henry Drummond Boswell	CM2517MC2	1156

27752 7590 03/28/2006

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/667,878	Applicant(s) BOSWELL ET AL.	
	Examiner Eisa B. Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 11, 19 and 21-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-11, 19 and 21-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

- 1 This action is responsive to the amendment filed on January 13, 2006.
- 2 The cancellation of claims 1-8, 12-18 and 20, is acknowledged. Pending claims are 10-11, 19 and 21-35.
- 3 The rejection of claims 1-8, 11-15, 19-27 and 29 under 35 U.S.C. 102(b) as being anticipated by or, in alternative under 103(a) obvious over Dias et al. (US' 355), is withdrawn because of the applicant's amendment.

New ground of rejection

Claim Rejections - 35 USC § 103

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 19 and 21-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US 6,004,355)

Dias et al. (US' 355) teaches a hair coloring composition comprising an oxidizing agent (see col. 3, line 3) and sequestrant (chelant) agents as claimed in claim 19 (see col. 23, line 65), wherein the chelant agent is Glycinamide-N,N'-disuccinic acid (GADS) (monoamine monoamide -N,N'-dipolyacid), which comprises more than carboxylic acid (-COOH) group as claimed in claims 23-25 (see col. 24, line 50), wherein the composition has a pH of 10, which is within the claimed range as claimed in claims 19 and 31 (see col. 32, line 65), wherein the composition is an aqueous solution as claimed in claim 11 (see col. 32, Examples I to VI),

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wherein the oxidizing agent comprises an aqueous hydrogen peroxide which is present in the amount of 0.1% to about 4%, which is within the claimed range as claimed in claim 26 (see col. 5, lines 45-64), wherein the composition further comprises an oxidative hair dye precursor as claimed in claim 27 (see col. 10, line 50). Dias et al. (US' 355), also teaches a kit comprising an oxidizing agent and one or more coloring agents as claimed in claims 29 and 35 (see col. 22, lines 65-67). Dias et al. (US' 355) further, teaches methods for coloring hair comprising the steps of applying to the hair an oxidative hair coloring composition that comprises hydrogen peroxide component (oxidizing agent), oxidation dye precursors and chelating agents as described above, wherein the methods comprise the step of applying to the hair the hydrogen peroxide component prior to application of the admixed contents of the oxidative hair coloring agents and additional materials as claimed (see col. 34, lines 21-25), and wherein the methods also comprise the steps of mixing the oxidative hair coloring agents and oxidizing agent before application to the hair and the mixture is applied to the hair for periods of time depending upon the degree of coloring required as claimed (see col. 34, lines 6-7 and lines 30-34). Dias et al. (US' 355) further, teaches that the composition can be applied separately as claimed (see col. 34, line 8).

The instant claims differ from the reference by reciting that the chelant provides a Normalized Shine Ratio of at least about 0.95.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a composition that comprises the claimed ingredients of hydrogen peroxide and chelant agents to arrive at the claimed invention. Such a modification would be obvious because Dias et al. (US' 355) teaches the similar hair treating ingredients of oxidizing agents and a chelant compound of Glycinamide-N,N'-disuccinic acid (GADS)

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(monoamine monoamide -N,N'-dipolyacid) in the claimed amount, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

5 With respect to claims 21-22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a composition in which the chelant has a hydrogen peroxide decomposition ratio of less than about 10% and wherein the chelant forming a hexadendate complex with Cu^{2+} as claimed, because Dias et al. (US' 355) teaches the chelant compound of Glycinamide-N,N'-disuccinic acid (GADS) (monoamine monoamide -N,N'-dipolyacid) in the claimed amount, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

6 Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US 6,004,355) in view of Wenke (US 5,100,436).

The disclosure of Dias et al. (US' 355), as described above, teaches hair treatment compositions in the form of hair coloring compositions (see col. 31, lines 62-64), wherein the compositions are thickened aqueous compositions (comprising thickeners and water) (see col. 32, Examples I to VI). The reference does not teach a hair treating composition in the form of an oil-in-water emulsion as claimed.

Wenke (US' 436) teaches in analogous art of oxidative hair formulation, a composition comprising primary intermediates (oxidative dye precursors) (see col. 9, lines 15-24), oxidizing agents such as hydrogen peroxide (see col. 10, line 58) and chelating agents (see col. 9, lines 36-37), wherein the composition is preferably liquid solution but may be in the form of emulsion, suspensions, lotions or gel. (see col. 9, lines 37-39).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to formulate the composition of the primary reference in a form of an emulsion (oil in water) as taught by Wenke (US' 436). Such modification would be obvious because the primary reference teaches an aqueous hair treating composition (see col. 32, Examples I to VI). The secondary reference of Wenke. (US' 436) clearly teaches different forms of the hair dyeing composition such as liquid solution, emulsion, suspensions, lotions or gel. (see col. 9, lines 37-39), and, thus, a person of an ordinary skill in the art would be motivated to formulate the dyeing composition of Dais et al. (US' 355) in any form including the claimed emulsion form, and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

Response to Applicant's Arguments

7 Applicant's arguments filed 1/13/2006 have been fully considered have been considered but are moot in view of the new ground(s) of rejection.

With respect to the declaration provided by the applicant to show unexpected results of the claimed invention over the prior art of record, the examiner's position is that the declaration is not commensurate in the scope with the claims because the "objective evidence of nonobviousness must be commensurate in the scope with the claims which the evidence is offered to support," In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. *In re Clemens*, 622 F.2d 1029,1036,206 USPQ 289, 296 (CCPA 1980). See also *In re Gransselli*, 713 F.2d 731, 741,218 USPQ 769, 777 (F3d. Cir. 1983) (Claims were directed to certain catalysts containing an alkali metal. Evidence presented to rebut an obviousness rejection compared catalysts containing sodium with the prior

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art. The court held this evidence insufficient to rebut the prima facie case because experiments limited to sodium were not commensurate in the scope with the claims.). In this case the Comparative data in the declaration compares the chelant agent EDDS (from the composition of the invention) and EDTA (from the compositions of the prior art), while the independent claims do not recite specifically the claimed species of EDDS that used in the comparative data . Therefore, the declaration is not commensurate in the scope with the claims.

8 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

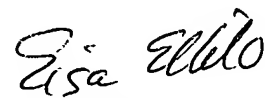
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

March 21, 2006